

Introduced by Senator Nielsen

February 19, 2016

An act to amend Section 2962 of the Penal Code, relating to mentally ill prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1295, as introduced, Nielsen. Mentally ill prisoners.

Existing law requires, as a condition of parole, a prisoner who meets specified criteria to be treated by the State Department of State Hospitals. Existing law requires the department to provide the necessary treatment.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2962 of the Penal Code is amended to
2 read:
3 2962. As a condition of parole, a prisoner who meets the
4 following criteria shall be required to be treated by the State
5 Department of State Hospitals, and the State Department of State
6 Hospitals shall provide the necessary treatment:
7 (a) (1) The prisoner has a severe mental disorder that is not in
8 remission or *that* cannot be kept in remission without treatment.
9 (2) The term “severe mental disorder” means an illness or
10 disease or condition that substantially impairs the person’s thought,
11 perception of reality, emotional process, or judgment; or which

1 grossly impairs behavior; or that demonstrates evidence of an acute
2 brain syndrome for which prompt remission, in the absence of
3 treatment, is unlikely. The term “severe mental disorder” ~~disorder,~~
4 as used in this ~~section~~ *section*, does not include a personality or
5 adjustment disorder, epilepsy, mental retardation or other
6 developmental disabilities, or addiction to or abuse of intoxicating
7 substances.

8 (3) The term “remission” means a finding that the overt signs
9 and symptoms of the severe mental disorder are controlled either
10 by psychotropic medication or psychosocial support. A person
11 “cannot be kept in remission without treatment” if during the year
12 prior to the question being before the Board of Parole Hearings or
13 a trial court, he or she has been in remission and he or she has been
14 physically violent, except in self-defense, or he or she has made
15 a serious threat of substantial physical harm upon the person of
16 another so as to cause the target of the threat to reasonably fear
17 for his or her safety or the safety of his or her immediate family,
18 or he or she has intentionally caused property damage, or he or
19 she has not voluntarily followed the treatment plan. In determining
20 if a person has voluntarily followed the treatment plan, the standard
21 shall be whether the person has acted as a reasonable person would
22 in following the treatment plan.

23 (b) The severe mental disorder was one of the causes ~~of~~ *of*, or
24 was an aggravating factor ~~in~~ *in*, the commission of a crime for
25 which the prisoner was sentenced to prison.

26 (c) The prisoner has been in treatment for the severe mental
27 disorder for 90 days or more within the year prior to the prisoner’s
28 parole or release.

29 (d) (1) Prior to release on parole, the person in charge of treating
30 the prisoner and a practicing psychiatrist or psychologist from the
31 State Department of State Hospitals have evaluated the prisoner
32 at a facility of the Department of Corrections and Rehabilitation,
33 and a chief psychiatrist of the Department of Corrections and
34 Rehabilitation has certified to the Board of Parole Hearings that
35 the prisoner has a severe mental disorder, that the disorder is not
36 in remission, or cannot be kept in remission without treatment,
37 that the severe mental disorder was one of the causes or was an
38 aggravating factor in the prisoner’s criminal behavior, that the
39 prisoner has been in treatment for the severe mental disorder for
40 90 days or more within the year prior to his or her parole release

1 day, and that by reason of his or her severe mental disorder the
2 prisoner represents a substantial danger of physical harm to others.
3 For prisoners being treated by the State Department of State
4 Hospitals pursuant to Section 2684, the certification shall be by a
5 chief psychiatrist of the Department of Corrections and
6 Rehabilitation, and the evaluation shall be done at a state hospital
7 by the person at the state hospital in charge of treating the prisoner
8 and a practicing psychiatrist or psychologist from the Department
9 of Corrections and Rehabilitation.

10 (2) If the professionals doing the evaluation pursuant to
11 paragraph (1) do not concur that (A) the prisoner has a severe
12 mental disorder, (B) that the disorder is not in remission or cannot
13 be kept in remission without treatment, or (C) that the severe
14 mental disorder was a cause of, or aggravated, the prisoner's
15 criminal behavior, and a chief psychiatrist has certified the prisoner
16 to the Board of Parole Hearings pursuant to this paragraph, then
17 the Board of Parole Hearings shall order a further examination by
18 two independent professionals, as provided for in Section 2978.

19 (3) If at least one of the independent professionals who evaluate
20 the prisoner pursuant to paragraph (2) concurs with the chief
21 psychiatrist's certification of the issues described in paragraph (2),
22 this subdivision shall be applicable to the prisoner. The
23 professionals appointed pursuant to Section 2978 shall inform the
24 prisoner that the purpose of their examination is not treatment but
25 to determine if the prisoner meets certain criteria to be involuntarily
26 treated as a mentally disordered offender. It is not required that
27 the prisoner appreciate or understand that information.

28 (e) The crime referred to in subdivision (b) meets both of the
29 following criteria:

30 (1) The defendant received a determinate sentence pursuant to
31 Section 1170 for the crime.

32 (2) The crime is one of the following:

33 (A) Voluntary manslaughter.

34 (B) Mayhem.

35 (C) Kidnapping in violation of Section 207.

36 (D) Any robbery wherein it was charged and proved that the
37 defendant personally used a deadly or dangerous weapon, as
38 provided in subdivision (b) of Section 12022, in the commission
39 of that robbery.

1 (E) Carjacking, as defined in subdivision (a) of Section 215, if
2 it is charged and proved that the defendant personally used a deadly
3 or dangerous weapon, as provided in subdivision (b) of Section
4 12022, in the commission of the carjacking.

5 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a)
6 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
7 262.

8 (G) Sodomy by force, violence, duress, menace, or fear of
9 immediate and unlawful bodily injury on the victim or another
10 person.

11 (H) Oral copulation by force, violence, duress, menace, or fear
12 of immediate and unlawful bodily injury on the victim or another
13 person.

14 (I) Lewd acts on a child under ~~the age of~~ 14 years *of age* in
15 violation of Section 288.

16 (J) Continuous sexual abuse in violation of Section 288.5.

17 (K) The offense described in subdivision (a) of Section 289
18 where the act was accomplished against the victim's will by force,
19 violence, duress, menace, or fear of immediate and unlawful bodily
20 injury on the victim or another person.

21 (L) Arson in violation of subdivision (a) of Section 451, or arson
22 in violation of any other provision of Section 451 or in violation
23 of Section 455 where the act posed a substantial danger of physical
24 harm to others.

25 (M) Any felony in which the defendant used a firearm which
26 use was charged and proved as provided in Section 12022.5,
27 12022.53, or 12022.55.

28 (N) A violation of Section 18745.

29 (O) Attempted murder.

30 (P) A crime not enumerated in subparagraphs (A) to (O),
31 inclusive, in which the prisoner used force or violence, or caused
32 serious bodily injury as defined in paragraph (4) of subdivision (f)
33 of Section 243.

34 (Q) A crime in which the perpetrator expressly or impliedly
35 threatened another with the use of force or violence likely to
36 produce substantial physical harm in such a manner that a
37 reasonable person would believe and expect that the force or
38 violence would be used. For purposes of this subparagraph,
39 substantial physical harm shall not require proof that the threatened
40 act was likely to cause great or serious bodily injury.

- 1 (f) As used in this chapter, “substantial danger of physical harm”
- 2 does not require proof of a recent overt act.

O